IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL REFERENCE NO.7 OF 2006

Kamalkant s/o Wamanrao Vitonde,
Metropolitan Magostrate.
17th Court, mazgaon, Mumbai ..Petitioner.

Vs.

Ghanshyam Gopaldas Khanchandani
& Anr. ..Respondents.

Ms.P.H.Kantharia, A.P.P. for the State.

Mr.Ghanshyam Gopaldas Khanchandani, Respondent No.1 in person.

CORAM : F.I. REBELLO AND
S.J. VAZIFDAR, JJ.

DATED : 14TH FEBRUARY, 2007

P.C. :

This Criminal Reference is made to this Court under Section 15(2) of the Contempt of Courts Act, 1971 by the Petitioner Metropolitan Magistrate, 17th Court, Mazgaon, Mumbai.

2. The Reference is essentially on the ground that on 13.10.2005 the alleged contemnor orally as well as by a written submission of that date, informed the Court that the Principal Judge of the Sessions Court had stayed 19 cases pending against him. Believing the same, the Petitioner stopped the

proceedings and adjourned them to 27.10.2005. On 27.10.2005, it was revealed that there was in fact no stay order alleged by the contemnor.

3. We have perused the submission dated 13.10.2005 made by the contemnor in the said 19 cases filed against him. He has stated that the Principal Judge of the Sessions Court had passed an order dated 11.10.2005 directing the complainant to file a written reply. The contemnor has further stated as under :-

> "**AND**
>
> B)... Also passed an **ORDER OF STAY OF THE PROCEEDINGS** pending before this Honble court."

4. We have also perused the order passed by the learned Principal Judge on 11.10.2005. The Principal Judge had merely sent for the record and proceedings in the said 19 cases. There was no express order staying the 19 cases filed by the Respondent. Technically therefore, the submission made by the contemnor that the Sessions Court had stayed the 19 proceedings was incorrect.

5. The Respondent has filed an extremely lengthy affidavits in this Court, justifying his conduct. Most of what is stated in the affidavits is thoroughly irrelevant. However, considering the fact that the Respondent has appeared in person and, in all probability, has drafted the affidavits himself, we intend taking a lenient view.

6. It appears that the Respondent may have presumed that the fact that the learned Principal Judge of the Sessions Court had called for the record and proceedings, the cases had been stayed. Though this is not what is expressly pleaded by the Respondent, on a liberal reading of his affidavits, we will presume that this is what he actually meant to say albeit, in a clumsy manner. He has therefore stated in his affidavit dated 11.2.2007 that he neither intended to nor tried to mislead the Court in any manner, or interfere with the course of justice. We ignore all the other averments made in the affidavits filed by him.

7. In this view of the matter, atleast on this occasion, we intend taking a lenient view and, therefore, drop the above proceedings against the contemnor.

8. We however make it clear that there is no stay order in operation as on date and the Sessions Court is at liberty to proceed with the cases unless ofcourse, the same are stayed hereafter in accordance with law.

9. The Reference is accordingly disposed of.